

**RECORD OF PROCEEDINGS OF THE GOVERNING BODY  
CITY OF GARDNER, KANSAS**

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October 4, 2021

The City Council of the City of Gardner, Kansas met in regular session on October 4, 2021, at 7:00 p.m. in the Council Chambers at Gardner City Hall, 120 East Main Street, Gardner, Kansas, with Mayor Steve Shute presiding. Present were Councilmembers Todd Winters, Mark Baldwin, Kacy Deaton, Randy Gregorcyk, and Tory Roberts. City staff present were City Administrator James Pruetting; Deputy City Administrator Amy Nasta; Finance Director Matthew Wolff; Police Chief James Belcher; Utilities Director Gonz Garcia; Parks and Recreation Director Jason Bruce; Community Development Director David Knopick; Public Works Director Kellen Headlee; City Attorney Ryan Denk; and City Clerk Sharon Rose. Others present included those listed on the sign-in sheet and others who did not sign in.

**CALL TO ORDER**

There being a quorum of Councilmembers present, Mayor Shute called the meeting to order at 7:00 p.m.

**PLEDGE OF ALLEGIANCE**

Mayor Shute led those present in the Pledge of Allegiance.

**PUBLIC HEARINGS**

**1. Hold a public hearing for the purpose of receiving comments to a request for a Waiver of the Distance Limitation to allow for the sale of alcoholic liquor for consumption on premise within 200 feet of a school, church or library during a bags/cornhole tournament**

Councilmember Baldwin made a motion to open a public hearing for the purpose of receiving comments to a request for a Waiver of the Distance Limitation to allow for the sale of alcoholic liquor for consumption on premise within 200 feet of a school, church or library during a bags/cornhole tournament

Councilmember Deaton Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

No members of the public came forward.

Councilmember Deaton made a motion to close the public hearing.

Councilmember Baldwin Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

**PRESENTATIONS**

**1. Downtown Sidewalk Snow Removal**

City Administrator Jim Pruetting said on July 16, the city notified downtown business owners via the Chamber's contact list that the city would no longer provide snow removal services in the downtown area, consistent with the city's snow removal ordinance passed in 2016 and following the recommendation of the city's liability insurance provider. The July notice was given to provide business owners time to secure snow removal services for the upcoming winter season. Council discussed this at the July 19 council meeting during updates, and there was discussion among the governing body about delaying the policy change for one year, due to feedback from the affected business owners. No consensus was reached on implementing a delay among the four voting council members, with one member recusing due to conflict of interest. There was a request to revisit this topic and place this issue back on the agenda for further discussion. Pruetting noted that staff reviewed snow removal policies of Spring Hill and Olathe. Spring Hill requires adjacent property owners to clear sidewalks and allows snow to be placed in off-street parking areas for city removal. Olathe requires both sidewalks and off-street parking areas to be cleared by the property owner.

Mayor Shute asked if the map indicates areas that Parks and Rec has done in the past. Pruetting confirmed.

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Steve Hines, 29147 W. 151<sup>st</sup> St, owns Groundhouse Coffee and the attached bakery, as well as neighboring business space. They represent owners and merchants. They opened in 2012 and were told city would handle snow removal. The downtown area is confined area with numerous owners and merchants and all the parking is public parking. It's different than a retail center with one owner and all the parking belongs to them. Any downtown area is what gives a community a sense of place. This downtown area is what people think of when they think of Gardner. When large chains go in, they will be busy, but what gives the city a sense of place is its downtown. When he wanted a bike rack, he was told no. The previous development director eventually said they could provide their own, but the city would have to install because it was the city's sidewalk. The city maintains the landscaping. Mr. Hines asked to delay this for one season. The administrator had noted that neighboring cities don't clear snow in downtown. Gardner is missing a time frame for downtown merchants. If it snows Saturday afternoon, Groundhouse opens 7am Sunday. He will clear it in front of his business, but other businesses aren't required to clear their snow until Sunday night or Monday. Take time to make informed decision on the best way to proceed.

Councilmember Winters asked where does the Groundhouse property end. Mr. Hines said it ends at the wall according to the tax bill. Councilmember Gregorcyk asked how many building owners signed Mr. Hines' document. Mr. Hines focused on those who own their property, not tenants. Mayor Shute asked about a recusal from Gregorcyk. Gregorcyk said he pays \$76 a month in CAM, which includes snow removal, and does not recuse himself. City Attorney Denk said the standard is whether he has direct pecuniary interest. Gregorcyk said he doesn't, because of the monthly CAM. He noted he never saw a map of the boundaries before tonight. Director Bruce said this is what the Parks staff uses for their reference. Gregorcyk confirmed he will not recuse because he has a contract and is a tenant not a landlord. Denk noted the ordinance reads owner and/or occupant. Gregorcyk will submit his contract as proof.

Jason Camis, Gardner Chamber of Commerce, had discussions with business owners and looked at other communities. If the city can hold off a year, they can plan. He noted the chamber is voluntary. Other communities have a "district" and fees or taxes can be levied. Downtown is the identity. How that is portrayed and serviced now and in the future is important. Camis suggests holding the ordinance one year. Mayor Shute noted an ordinance created district charges a fee to be used for maintenance, snow removal and beautification. Camis said the fee can be based on square footage. Shute asked Director Bruce how many times they remove snow in a typical season, what are the man-hours? Councilmember Winters noted a lot of the area is city property. Bruce said it varies storm to storm, and if it's weekday versus weekends. Staff prioritizes their clearing. Gregorcyk suggested holding the ordinance and do a time study on what is city property and what is public sidewalks. They can use a percentage of transient guest tax to offset the cost to the non-city property. Councilmember Roberts was in favor of keeping snow removal in downtown at the last discussion because they set precedence for 20 years. Baldwin asked if she wants to repeal current ordinance. Roberts confirmed. Councilmember Deaton asked if that includes all property. Roberts said it would be for the downtown area that they set precedence. Winters said the property ends at the building, but as a property owner, they go to the street. Roberts said they want downtown to be a destination, and providing snow removal for these businesses is showing the city means it. Shute said other cities have snow removal and the downtown businesses pay a portion of it. Gregorcyk supports suspending ordinance to determine cost over the winter. Deaton said her concern is the liability. Gregorcyk said they've taken the liability for 20 years. Deaton asked why they should continue that. This ordinance was voted on almost unanimously. The liability falls by state statute and city ordinance on the property owner. If the city assumes snow removal, then liability is on the city and on taxpayers. Gregorcyk said the liability has been on the city for 20 years. Shute said it was a validly passed ordinance. Gregorcyk said it wasn't enforced for 5 years. Baldwin noted the ordinance states that private owners will clear their snow. If they use transient guest tax, they need to be equitable to all business districts. If the city will clear the snow, why insert government into a private transaction. Gregorcyk said they've done it for 20 years. Baldwin asked why they would continue a bad decision. It's a private business with a private contract. Shute said the 2016 ordinance was driven by the city's liability insurance provider. They said it was bringing undue liability on the city. Other owners clear their sidewalks; this ordinance included downtown. There were issues that led to it not being enforced, but the original intent was to shield the city from liability. They can set a business district like other communities and the downtown businesses can pay a fee, but not hold the city

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responsible for what happens on the sidewalk in front of their business. Gregorcyk said if they know what the labor is, they can determine costs for the building owners. Baldwin said they can get the cost by calling a contractor. Roberts asked if the ordinance 5 years ago have a grace period, and can that grace period be apply this year? Baldwin said they don't need a grace period since they discussed it in July. This is a common business expense. Camis said other business owners went into CAMs knowingly, but they couldn't get 25 business owners organized in the short time since July. They can't get quotes right now; contractors are booked. There can be issues of customers not accessing businesses because a neighboring business didn't shovel their sidewalks. In Ottawa, businesses have 4 or 6 hours for snow removal, and includes the city removing the snow from off-street parking. Camis asked for an extra year to organize. The chamber can help, but not every business is in the chamber, and they can't compel them to participate. Baldwin said individual business owners have the liability and need to clear their sidewalk to get business in. They can look at the hours, but there's incentive for everyone to clean their sidewalks. He asked why these businesses are special. If continuing on 20 years of bad precedence, the city should charge them, or open it to every business on Main St. Baldwin said the ADA committee chose 48 hours because they thought it would be difficult to make it less. They can revisit that. Shute said there should be a different standard for business vs. residential. Baldwin suggested letting the businesses handle it for a year and then see if they need to revisit. Gregorcyk suggested setting a timeline of 6 months, then discuss options with building owners. Baldwin asked if that's for all business owners, not just downtown. Gregorcyk said they should be invited. They don't know how much it costs now. Pruetting said at the Justice Center it costs \$500 from 1-3 inches, and then goes up for based on square footage, sidewalks, salt, and sand. Cost isn't the main consideration, liability is. If they want to look at cost, they can contract for businesses for this year and see what it is. Gregorcyk said they can divide the cost over the interested business owners, and have a contractor do it. Deaton asked why the city will hire the contractor and collect the money. She supports getting completely out of it, as the risk assessor said. Winters asked how liability is determined if they own to their wall. Denk said all sidewalks are in the public right of way. A building owner owns to the centerline of the right of way. If the city removes the snow and relieves property owners of that responsibility, then the city takes on the risk. Denk referenced CO 18 and said the transient guest tax can only be used for economic development promotion. One provision applies to "activities designed to encourage retention and expansion of existing businesses in the community." Gregorcyk supports that use. Denk said other municipalities have done this through a Community Improvement District, but the way it's used in this context is different. There would need to be a proposed district boundary and property owners within that district would petition the city. Part of the activities that the CID can perform is snow removal. Shute said the owners in that district would be assessed fees. Winters said delaying one more season would afford the owners the ability to do that. Shute said a CID would calculate fees that could go up and some owners may not be able to afford them. Baldwin said the government shouldn't implement a CID; it needs to be requested by the business owners. Gregorcyk said it's an opportunity to attract more business. Baldwin said when advertising that people do maintenance here, it's not an attraction. Gregorcyk referenced Mr. Hines' saying he was told the city had precedence to remove snow. It was an added value. Baldwin said the businesses could change ownership and that would change the CID. Gregorcyk said there's a 20-year precedence, and the city held the liability for the past 5 years. Baldwin asked if they are doing things inaccurately, putting the city in liability, and they should continue it. Gregorcyk said they can get better data for decision. Shute said there is an ordinance. Roberts and Winters support waiting a year, Gregorcyk supports 6 months to communicate. Shute asked how they will absolve the city of liability. Baldwin said they can repeal the ordinance. Gregorcyk said it's a start. Deaton said the ordinance is for all property owners, so no one would have to shovel. Gregorcyk said don't repeal it, but do a 6-month moratorium and assess it specific to the map. Shute said they need agreement from property owners that the city isn't liable. Deaton said the person who is injured will hold the city responsible. Baldwin said they can't put the city in a liable position any longer. Winters said the liability is concerning, and MPR is saying that. Sam Boyajian, 131 E. Main St., said they don't do this for other businesses, but downtown is the face of a community. City Hall is downtown because downtown is special. He doesn't believe an attorney would not go after the city and only go after a property owner. His property line ends at his wall. Pruetting said by state statute, the adjacent property owner maintains sidewalk. Shute said they changed in 2016 because the risk management firm said if the city continues, they assume liability. Boyajian asked who is responsible, the owner or lessee? Baldwin said the owner and tenant would need an agreement. Pruetting said

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any cost to abate a problem would go to the property owner. Shute said because they are discussing it, they are exposing themselves to undue liability. Baldwin said there's less liability if the city is out of the equation. Winters agrees. Deaton said the state statute is clear. Taking on responsibility means taking on the risk. They are putting liability on every taxpayer. Those taxpayers are already responsible for their own sidewalks, and now they'll be liable for these sidewalks. Winters asked if they can push the snow to the street, and the city can remove it. Pruetting said they do that now; the snow is put in an off-street parking spot and the city removes it. Shute said Parks & Rec wouldn't be pushing it from the sidewalk. Deaton said that would absolve the city and taxpayers of the liability and they would be following the ordinance. Winters said liability is a deal breaker. Gregorcyk asked how they will enforce when they haven't for the past 5 years. Pruetting said staff send a letter notifying them to abate a problem. If they don't, the city hires a contractor and puts a lien on the property. Pruetting said they need to shorten the time. Shute supports amending the ordinance to shorten the time for businesses. Pruetting said they can designate a downtown boundary where the time would be different. Camis asked who clears parking stalls on Main St. Pruetting said Public Works. Bruce said staff can prioritize parking for businesses and clear the snow once the business removes it from the sidewalk. Shute said they may have consensus to set up a district time limit for removal. Baldwin suggested getting input from business owners. The EDAC can look into it. Deaton suggested involving PWAAC. Winters said realizing the liability was a turning point for him. They can't put the city in that position. Shute said discussion needs to continue with business owners. Baldwin said they could host a town hall.

**PUBLIC COMMENTS**

No additional members of the public came forward.

**CONSENT AGENDA**

- 1. Standing approval of the minutes as written for the regular meeting on September 20, 2021**
- 2. Standing approval of City expenditures prepared September 17, 2021 in the amount of \$1,530,852.89; and September 24, 2021 in the amount of \$1,032,570.03**

Councilmember Gregorcyk made a motion to approve the Consent Agenda.

Councilmember Baldwin Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

**PLANNING & ZONING CONSENT AGENDA**

**COMMITTEE RECOMMENDATIONS**

**OLD BUSINESS**

**NEW BUSINESS**

- 1. Consider a request for a Waiver of the Distance Limitation and a "General Retailer" Special Event permit to allow for the sale of alcoholic liquor for consumption on premise within 200 feet of a school, church or library during a bags/cornhole tournament**

City Clerk Sharon Rose said this is a housekeeping item in relation to the public hearing held earlier this evening. This will be for a charity tournament to be held at Tumbleweed Bar & Grill. She noted that Tumbleweed received a temporary extension of their state liquor license for this, as well.

Councilmember Baldwin made a motion to approve a request for a Waiver of the Distance Limitation and a General Retailer Special Event temporary permit to allow for the sale of alcoholic liquor for consumption on premise within 200 feet of a school, church or library during a bags/cornhole tournament to be held October 9, 2021 at Tumbleweed Bar and Grill, 615 E. Main St.

Councilmember Winters Seconded.

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With all of the Councilmembers voting in favor of the motion, the motion carried.

**2. Consider a resolution declaring the intent of the City to issue Industrial Revenue Bonds (taxable under Federal Law) for the purpose of financing a portion of the costs of the acquisition, construction and equipping of Phase 2 of a multifamily apartment project within the City (Tallgrass Apartments, Phase 2)**

Finance Director Matt Wolff said June 7, 2021, the City Council approved Resolution No. 2084 (the "Master Resolution of Intent") expressing its intent to issue up to \$37,900,000 principal amount of Industrial Revenue Bonds (IRBs) to finance a portion of one or multiple phases of a multifamily apartment project (Tallgrass). This financing approach would provide the developer with a sales tax exemption on construction materials, which would enable the developer to include more amenities into the project. The Master Resolution of Intent provides that the developer will request, and the City Council will consider, a supplemental Resolution of Intent for each phase of the project. When the supplemental Resolution of Intent is considered for each phase, the developer can obtain a sales tax exemption certificate applicable to the construction materials and equipment associated with such phase. The proposed resolution is declaring the intent to issue up to \$12,540,000 in IRBs for Phase 2 of the multifamily development (Tallgrass). The bonds shall not be general obligations of the City, nor constitute a pledge of full faith and credit of the City and shall not be payable in any manner by taxation.

Councilmember Gregorcyk said the master resolution of intent is \$37.9 Million. Phase 2 is \$12.6 Million. How many phases are there and how much is left in the master? Director Wolff said around \$25.4 Million. Director Knopick said Phase 1 is almost complete, and not applicable under the master resolution. He believes there are 3 more phases. Mayor Shute noted these IRBs were requested for sales tax exemption for construction supplies. Wolff confirmed and stated there is no property tax abatement. Shute said there is no obligation on the city. Wolff said the city doesn't have the businesses that support this type of construction materials.

Councilmember Gregorcyk made a motion to adopt a resolution declaring the intent of the City of Gardner, Kansas, to issue Industrial Revenue Bonds (taxable under federal law) in the principal amount not to exceed \$12,540,000 for the purpose of financing a portion of the acquisition, construction and equipping of Phase 2 of a multifamily apartment project within the City (Tallgrass Apartments, Phase Two)

Councilmember Deaton Seconded.

With all of the Councilmembers voting in favor of the motion, the Resolution passed and was assigned Resolution number 2094.

Gregorcyk:	Yes
Baldwin:	Yes
Deaton:	Yes
Roberts:	Yes
Winters:	Yes

**3. Consider approving new reorder point and quantity stock levels and authorizing the implementation of the 2022 Utilities Purchasing Program**

Utilities Director Gonz Garcia said due to the new construction plans for the next 3-4 years and extended lead times to get materials, staff recommends increasing the reorder point and quantity.

Councilmember Gregorcyk asked how staff determines what is critical or not critical, considering lead times. Director Garcia said back in 2018, they implemented a management program with Lucity. They set up 5 warehouses to track the 5 divisions. Electric Distribution and Line Maintenance have the highest inventory. Based on historical usage, staff determined what is critical and set reorder points and quantities.

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Councilmember Gregorcyk made a motion to approve new reorder point and quantity stock levels and authorize the implementation of the 2022 Utilities Purchasing Program as proposed.

Councilmember Baldwin Seconded.

**COUNCIL UPDATES**

Chief Belcher said Wednesday is national Coffee with a Cop. They will have an event at the Justice Center at 8:30am with Sheriff's officers. The coffee will be supplied by Groundhouse.

Mayor Shute asked about a date for the US56 project bid letting. Director Headlee said October 20.

Councilmember Winters noted winter is coming, and asked if there is any way to be proactive with potholes as a stopgap until construction starts. Headlee said he will discuss with KDOT.

Director Knopick said they will have an EDAC meeting next Wednesday. Building permits have slowed, but currently they have 20 single-family home permits and Treadway Apartments have come in with their Phase 1 permits. Builders are suffering with supply chain issues and labor issues.

Director Bruce thanked city staff with their assistance with the Grand Slam festival. They sold over 300 tickets. Council relayed positive their feedback.

Councilmember Roberts asked when the cones will be removed on Santa Fe turning onto 56. Director Headlee will look into it.

Councilmember Gregorcyk thanked Administrator Pruetting and Director Headlee for the new truck fine signs throughout the city.

Mayor Shute thanked staff for Grand Slam. Shute asked about the pedestrian signal at 183<sup>rd</sup> and Center. Cones are still there. Director Headlee said they are having supply chain issues. The signal pole shipped the end of last week. Shute asked how staff can mitigate those issues and get supplies on hand. Headlee said they are looking at signals, and said they aren't consistent in the types of materials used. The goal is to get to a consistent approach on signalization.

**EXECUTIVE SESSION**

**1. Consider entering into executive session to discuss matters of attorney-client privilege relating to the Gardner Road/I-35 project**

Councilmember Deaton made a motion to recess into executive session pursuant to K.S.A. 75-4319 (b)(2), to discuss matters of attorney-client privilege relating to the Gardner Road/I-35 project beginning at 8:29 pm; returning to regular session at 8:44 pm.

Councilmember Winters Seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

Councilmember Gregorcyk made a motion to resume regular session at 8:45 p.m.

Councilmember Baldwin seconded.

With all of the Councilmembers voting in favor of the motion, the motion carried.

**ADJOURNMENT**

There being no further business to come before the Council, on a motion duly made by Councilmember Deaton and seconded by Councilmember Baldwin the meeting adjourned at 8:45p.m.

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City Clerk

## City of Gardner, KS

### Council Actions

October 4, 2021

The City Council took the following actions at the October 4, 2021, meeting:

1. Held a public hearing for the purpose of receiving comments to a request for a Waiver of the Distance Limitation to allow for the sale of alcoholic liquor for consumption on premise within 200 feet of a school, church or library during a bags/cornhole tournament.
2. Heard a presentation regarding Downtown Sidewalk Snow Removal.
3. Approved the minutes as written for the regular meeting on September 20, 2021. (Passed unanimously)
4. Approved City expenditures prepared September 17, 2021 in the amount of \$1,530,852.89; and September 24, 2021 in the amount of \$1,032,570.03. (Passed unanimously)
5. Approved a request for a Waiver of the Distance Limitation and a General Retailer Special Event temporary permit to allow for the sale of alcoholic liquor for consumption on premise within 200 feet of a school, church or library during a bags/cornhole tournament to be held October 9, 2021 at Tumbleweed Bar and Grill, 615 E. Main St. (Passed unanimously)
6. Adopted Resolution No. 2094, a resolution declaring the intent of the City of Gardner, Kansas, to issue Industrial Revenue Bonds (taxable under federal law) in the principal amount not to exceed \$12,540,000 for the purpose of financing a portion of the acquisition, construction and equipping of Phase Two of a multifamily apartment project within the City (Tallgrass Apartments, Phase Two). (Passed unanimously)
7. Approved new reorder point and quantity stock levels and authorize the implementation of the 2022 Utilities Purchasing Program as proposed. (Passed unanimously)
8. Recessed into executive session pursuant to K.S.A. 75-4319 (b) (2), to discuss matters of attorney-client privilege relating to the Gardner Road/I-35 project for 15 minutes. (Passed unanimously)